(19,264.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 613.

EDWARD JASTER, SENIOR, PLAINTIFF IN ERROR,

vs.

F. M. CURRIE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 15, 1904.

1 EDWARD JASTER, SR., v. F. M. CURRIE. } No. 12840.

Pleas before the supreme court of the State of Nebraska, at a term thereof begun and holden at the capitol, in the city of Lincoln, in said State, on the 6th day of January, A. D. 1903.

Present: Hon. J. J. Sullivan, chief justice; Hon. Silas A. Holcomb, judge; Hon. S. H. Sedgwick, judge.

Attest: LEE HERDMAN, *Clerk.*

Be it remembered, that, on the 4th day of August, A. D. 1902, there was filed in the office of the clerk of said supreme court a certain petition in words and figures following, to-wit:

In the Supreme Court, State of Nebraska.

EDWARD JASTER, SR., Plaintiff in Error, v. F. M. CURRIE, Defendant in Error. } Petition in Error.

2 Edward Jaster, Sr., plaintiff in error, complains of F. M. Currie, the defendant in error, and alleges that heretofore, to-wit, on the 7th day of June, A. D. 1902, in a certain cause then pending in the district court of Custer county, Nebraska, wherein the plaintiff in error was plaintiff and the defendant in error was defendant, the said defendant did by the consideration of said court recover against the plaintiff a final judgment that he go hence without day and recover his costs, taxed in the sum of $16.80; a transcript of the records and proceedings in said cause is hereto attached and filed herewith. Plaintiff in error alleges that there is error in said record and proceedings in this, to-wit:

First.

The court erred in overruling the demurrer of plaintiff to the amended answer of defendant.

Second.

Judgment should have been rendered sustaining the demurrer of plaintiff to the amended answer of defendant.

Third.

The court erred in rendering judgment in favor of the defendant and against plaintiff.

Fourth.

The judgment should have been rendered in favor of plaintiff on the issue of law joined on said demurrer.

To all of which rulings and decisions the plaintiff duly excepted at the time.

Wherefore, plaintiff in error prays that said judgment may be reversed and held for naught, and that he may be restored to all things lost thereby and may recover his costs.

SIMON CAMERON &
O. A. ABBOTT,
Att'ys for Plaintiff in Error.

Endorsed: 12840. Edward Jaster, Sr., *v.* F. M. Currie. Petition in error. Supreme court of Nebraska. Filed Aug. 4, 1902, Lee Herdman, clerk.

3 And on the same day there was filed in the office of the clerk of said supreme court a certain transcript in words and figures following, to-wit:

Pleas before the district court of the twelfth judicial district, held in and for the county of Custer and State of Nebraska, at a term thereof begun and holden in the city of Broken Bow, in said county and State, on the 26th day of May, 1902.

Present: Hon. H. M. Sullivan, judge, C. T. Orr, clerk.

That, on the 13th day of September, 1900, there was filed an action in the office of the district court in the following case:

EDWARD JASTER, SR., Plaintiff,
vs.
F. M. CURRIE, Defendant.

And now, on this 7th day of June, 1902, this cause came on to be heard before the court, the Hon. H. M. Sullivan, judge, presiding, this being one of the days of the regular May, 1902, term of the district court, held in and for the county of Custer, in the twelfth judicial district of Nebraska, the plaintiff appearing by Simon Cameron, his attorney, and the defendant appea-ing by C. L. Gutterson, his attorney.

And the plaintiff in granted leave to file substituted amended petition, the defendant to refile original amended answer, and the plaintiff to file demurrer to amended answer.

And afterwards, on the 7th day of June, 1902, there was filed in the clerk's office the following substituted amended petition,
4 to-wit:

In the District Court of Custer County, Nebraska.

EDWARD JASTER, SR., Plaintiff,
vs.
F. M. CURRIE *et* —, Defendant-. } Substituted Amended Petition.

1. The plaintiff complains of the defendant and alleges that of the 9th day of May, 1900, the same being one of the days of the regular May, 1900, term of the court of common pleas, being a court of record and general jurisdiction within and for the State of Ohio and in the county of Trumbull in an action there pending in said court in favor of said plaintiff and against said defendant, said plaintiff recovered a judgment against said defendant for the sum of $861.00 and costs of suit, taxed at $100.00, and that said judgment bears interest at the rate of ten per cent. per annum.

2. Said judgment has not been paid or any part thereof, and there is now due from the defendant to the plaintiff thereon the sum of $861.00 and interest thereon at the rate of ten per cent. per annum from May 9th, 1900, with costs, taxed at $100.00.

3. A duly certified transcript of said judgment and proceedings is hereto attached, marked "Exhibit A" and hereby made a part of this petition.

Plaintiff alleges that summons in said action in the court of common pleas in and for Trumbull county, Ohio, was served upon said defendant, F. M. Currie, by the sheriff of said Trumbull county on the 7th day of September, 1899, after 8 o'clock, a. m. of
5 said day.

That, on October 6th, 1899, in said action said F. M. Currie filed a motion to set aside the sheriff's return of said service of summons, of which motion the following is a copy:

STATE OF OHIO, *Trumbull County,* } *ss:*

In the Court of Common Pleas.

EDWARD JASTER, SR, Plaintiff,
vs.
FRANK M. CURRIE ET AL., Defendants. } Motion for the Sole and Only Purpose of Setting Aside the Sheriff's Return and Service of Summons.

Said defendant, Frank M. Currie, appearing solely for the purpose of this motion and not intending thereby or hereby to enter his

appearance, moves that the sheriff's return of service of summons be set aside.

By GILBERT & CHRYST,
Attorneys for said Frank M. Currie.

That, on December 8th, 1899, the following notice was filed in said case with acknowledgement of service by said Edward Jaster, duly endorsed thereon, to-wit:

THE STATE OF OHIO, } ss:
Trumbull County, }

In the Court of Common Pleas.

EDWARD JASTER, SR., Plaintiff,
vs.
FRANK M. CURRIE ET AL., Defendants. } Notice of Motion.

6 Plaintiff is hereby notified that on the 13th day of December, 1899, at nine o'clock a. m. defendant, F. M. Currie, will apply to Hon. T. T. Gilmer, one of the judges of said court, at the court room for an order to set aside the sheriff's return of service of summons in said action and affidavits will be used on said hearing.

GILBERT & CHRYST,
Attorneys for F. M. Currie.

Dated December 8th, 1899.

Service accepted this 7th day of December, 1899.

T. H. GILMER,
Attorney for Edward Jaster, Sr."

That affidavits were filed in support of said motion. That at the October, 1899, term of said court of common pleas, plaintiff was allowed until Jan. 1st, 1900, to file affidavits and the defendant until Jan. 29th, 1900, to file affidavits in rebuttal and case continued over the term.

That at the January, 1900, term of said court of common pleas hearing was had on said motion of F. M. Currie to set aside service of summons on defendant, Currie, and said motion overruled, to which defendant excepted and statutory time given to prepare and file bill of exceptions.

That the issue raised and tried by the affidavits in support of said motion, the counter affidavits and affidavits in rebuttal was that said court of common pleas in and for Trumbull county, Ohio, had no jurisdiction over the person of defendant Frank M. Currie for the reason that said Frank M. Currie had gone to said Trumbull county, Ohio, in response to the service of a motion to take deposition in said action pending in the district court of Custer county,

Nebraska, in which Edward Jaster, Sr., plaintiff herein, was plaintiff and Frank M. Currie, defendant herein with others, was defendant. Said depositions to be taken and were taken on Sep-
7 tember 5th, 1899, in behalf of said plaintiff, Edward Jaster, Sr.

That no supersedeas bond was filed by defendant, Frank M. Currie. That at the April, 1900, term of the circuit court of the 7th judicial district, held in and for Trumbull county, Ohio, the decision of the court of common pleas in overruling said motion of said Currie was sustained and affirmed, to which ruling defendant Currie duly excepted.

That — the May, 1900, term of said court of common pleas said cause of Edward Jaster, Sr., *vs.* F. M. Currie came up on special mandate from the circuit court of said Trumbull county and defendant Currie being in default for answer or demurrer, jury being waived, judgment was duly entered in said court of common pleas in favor of said plaintiff, Edward Jaster, Sr., and against said defendant, F. M. Currie, in the sum of $861.00 and costs of suit.

That said ruling of said circuit court of said Trumbull county, Ohio, in affirming the decision of said court of common pleas in said action of Jaster *vs.* Currie was duly prosecuted by writ of error by said F. M. Currie, defendant, to the supreme court of the State of Ohio and since the commencement of this action the supreme court of the State of Ohio has rendered its decision sustaining and affirming the decision of the court of common pleas and the circuit court of Trumbull county, Ohio, in overruling said motion of Frank M. Currie.

"EXHIBIT A."

Record Book No. 114, page 574.

Pleas before the court of common pleas within and for the county of Trumbull and State of Ohio, at a term of said court be-
8 gun and continued at the court house, in the city of Warren, on Monday, May 7th, A. D. 1900.

EDWARD JASTER, SR., *vs.* F. M. CURRIE ET AL. } App. Doc. 23, Page 7095.

Be it remembered that, heretofore, to-wit, on September 7, 1899, came the pa*l*intiff and filed in the office of clerk of said court his petition which is in words and figures following, to-wit:

THE STATE OF OHIO, *Trumbull County*, } ss:

In the Court of Common Pleas.

EDWARD JASTER, SR., Plaintiff,
vs.
F. M. CURRIE, AMOS PERKINS, and WILLIAM PERKINS. Defendants. } Petition.

First Cause of Action.

Plaintiff, for his first cause of action, says that the defendants, Amos Perkins, and William Perkins, as makers, and F. M. Currie, as endorsers, are indebted to him on a promissory note of which the following is a true copy.

$200.00. SARGENT, NEBRASKA, *January 10th*, 1893.

On the first day of January, 1894, for value received, I, we, or either of us, promise to pay to the order of F. M. Currie, two hundred dollars, at the office of Frank M. Currie, Sargent, Nebraska, with interest at ten per cent. per annum from date until paid.

9 The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and non-payment of this note, and all defense on the ground on an entension of the time of its payment that may be given by the holders, to them or either of them.

AMOS PERKINS,
WILLIAM PERKINS.

Indorsed: Pay to the order of E. Jaster, Sr., F. M. Currie.

There are no other indorsements on said note and no part of the same has been paid.

Second Cause of Action.

Plaintiff for his second cause of action, says that the defendants Amos Perkins and William Perkins, as makers, and F. M. Currie, as endorsee, are indebted to him on a promissory note of which the following is a true copy:

$200.00. SARGENT, NEBRASKA, *January 10th*, 1893.

On the first day of January, 1895, for value received, I, we, or either of us, promise to pay to the order of F. M. Currie, two hundred dollars at the office of Frank M. Currie, Sargent, Nebraska, with interest at ten per cent. per annum from date until paid.

The drawers and endorsers severally waive presentment for payment, protest, and notice of protest, and non-payment of this note, and all defense on the ground of an extension of the time of its payment that may be given by the holders, to them or either of them.

AMOS PERKINS.
WILLIAM PERKINS.

Endorsed: Pay to the order of E. Jaster, Sr., F. M. Currie.

10 There have been no payments on said note.

Third Cause of Action.

Plaintiff for his third cause of action says that the defendants, Amos Perkins and William Perkins, as makers and F. M. Currie, as endorser, are indebted to him on a promissory note of which the following is a true copy:

$200.00. SARGENT, NEBRASKA, *January 10th*, 1893.

On the first day of January, 1896, for value received, I, we, or either of us, promise to pay to the order of Frank M. Currie $200, Sargent, Nebraska, with interest at ten per cent. per annum from date until paid.

The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note and all defense on the ground of an extention of the time of its payment that may be given by the holders to them or either of them.

AMOS PERKINS.
WILLIAM PERKINS.

Endorsed: Pay to the order of E. Jaster, Sr., F. M. Currie.

There are no other endorsement- on said note and no payments have been made thereon.

Plaintiff says that he purchased said notes in the regular course of business, for valuable consideration, and before any one of them was due; that there is due to him from defendant on his first cause of action $200.00 and interest at the rate of 10 % from January 10th, 1893.

11 That there is due him on his second cause of action from said defendants the sum of $200.00 and interest from January 10th, 1893, at the rate of ten per cent. per annum.

That there is due him on his third cause of action the sum of $200.00 at the rate of 10 % from January 10th, 1893.

Wherefore, plaintiff asks judgment against said defendants in the

aggregate amount of $600.00 and interest at the rate of 10 % per annum from January 10th, 1893.

T. H. GILLMER,
Attorney for Plaintiff.

THE STATE OF OHIO, *Trumbull County,* } ss:

Before me, a notary public in and for said county, personally came T. H. Gillmer, who on oath says that he is attorney for plaintiff in this action; that the basis of this action are written instruments for the payment of money only and are now in the possession of affiant; that the statements made in this petition are, as affiant believes, true.

T. H. GILLMER.

Signed in my presence and sworn to before me this 6th day of September, A. D. 1893.

E. E. ROBERTS,
Notary Public.

[SEAL.]

September 7th, 1899.—Præcipe filed, and is in words and figures following, to-wit:

EDWARD JASTER, SR., Plaintiff,
v.
F. M. CURRIE, AMOS PERKINS, and WILLIAM PERKINS, Defendants. } Præcipe.

12 To the clerk:

Issue summons to the sheriff of Trumbull county for F. M. Currie, endorsed, amount claimed $600.00 and interest from January 10th, 1893, at 10 %.

T. H. GILLMER.

September 7th, 1899.—Summons issued to sheriff, and is in words and figures following, to-wit:

THE STATE OF OHIO, *Trumbull County,* } ss:

To the sheriff of the county of Trumbull:

You are commanded to notify F. M. Currie that he with others has been sued by Edward Jaster, Sr., plaintiff, in the court of common pleas of Trumbull, and that unless he answer by the 7th day of October, A. D. 1899, the petition of said plaintiff against him, filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 18th day of September, A. D. 1899.

Witness my hand and the seal of said court at the court house in Warren, in said county, this 7th day of September, 1899.

[SEAL.] W. B. SWAGER, *Clerk.*

September 18th, 1899.—Sheriff's return filed and is in words and figures following, to-wit:

Sheriff's Return.

THE STATE OF OHIO, } ss:
Trumbull County, }

Received this writ September 7th, A. D. 1899, at 8 o'clock a. m. and pursuant to its command on the same day I summoned
13 the within named F. M. Currie by delivering to him personally a true and certified copy hereof with the endorsements thereon.

F. E. CALDWELL, *Sheriff.*

Sheriff's office, Warren, Ohio, September 18th, 1899.

October 6th, 1899.—Motion filed and is in words and figures following, towit:

STATE OF OHIO, } ss:
Trumbull County, }

In the Court of Common Pleas.

EDWARD JASTER, SR., Plaintiff,
vs.
FRANK M. CURRIE ET AL., Defendants.

Motion for the Sole and Only Purpose of Setting Aside the Sheriff's Return on Service of Summons.

Said defendant, Frank M. Currie, appearing for the purpose of this motion, and not intending thereby or hereby to enter his appearance, moves that the sheriff's return of service of summons be set aside.

By GILBERT & CHRYST,
Attorneys for said Frank M. Currie.

December 8th, 1899.—Notice filed and is in words and figures following, to-wit:

THE STATE OF OHIO, } ss:
Trumbull County, }

In the Court of Common Pleas.

EDWARD JASTER, SR., Plaintiff,
v.
F. M. CURRIE, AMOS PERKINS, and WILLIAM Perkins, Defendants. } Notice of Motion.

14 Plaintiff is hereby notified that on the 13th day of December, 1899, at nine o'clock a. m. defendant, F. M. Currie, will apply to Hon. T. I. Gillmer, one of the judges of said court, at the court room, for an order to set aside the sheriff's return of service of summons in said action, and affidavits will be used on said hearing.

GILBERT AND CHRYST,
Attorneys for F. M. Currie.

Dated December 8th, 1899.

Service accepted this 7th day of December, 1899.

T. H. GILLMER,
Att'y for Edward Jaster, Jr.

Journal 43, page 364, October term, 1899, to-wit, Friday, December 26th.

It is ordered that plaintiff be allowed until January 1st, 1900, to file affidavits, and defendant be allowed until January 29th, 1900, to file affidavits in rebuttal and this cause continued until next term of court.

Journal 43, page 431, January term, 1900, to-wit, Monday, February 26th.

This cause came on to be heard on the motion of defendant F. M. Currie, to set aside the service of summons made upon him and the court upon consideration overrules the same, to which ruling of the court in overruling said motion defendant excepts and has statutory time in which to prepare and file bill of exception.

Journal 43, page 467, January term, 1900, to-wit, March 17th.

Now comes the defendant (plaintiff in error) by his attorneys and presents to the court his certain bill of exceptions herein, which being found by the court to be true, is signed, sealed and on motion of plaintiff in error ordered to — made a part of the record in this case.

15 *Proceedings in Circuit Court.*

March 19th, 1900.—Petition in error filed and is in words and figures following, to-wit:

THE STATE OF OHIO, } ss:
Trumbull County, }

In the Circuit Court.

FRANK M. CURRIE, Plaintiff in Error,
v.
EDWARD JASTER, SR, Defendant in Error. } Petition in Error.

Plaintiff in error says that, at the January term, A. D. 1900, of the court of common pleas of Trumbull county, Ohio, in an action then pending therein, wherein plaintiff in error was defendant, and defendant in error was plaintiff, said court overruled a motion to set aside the sheriff's return of service of summons filed by plaintiff in error in said action, a transcript of the docket and journal entries whereof, and pleading, affidavits and exhibits filed in said action are filed herewith.

There is error in said record and proceedings in this, to-wit:

1st. Said court erred in overruling said motion.

2nd. That overruling said motion was contrary to law and the evidence.

3rd. That under the law and the evidence said motion should be sustained.

4th. Other errors of law and fact appearing on the record.

Plaintiff in error, therefore, prays that said order may be reversed and he be restored to all things he has lost by reason thereof.

FRANK M. CURRIE,
By his attorneys, GILBERT AND CHRYST.

16 Circuit Court Journal 2, page 160, April term, A. D. 1900, viz., Friday, April 13.

This cause came on to be heard to the court upon the petition in error and was argued by counsel and submitted to the court on the errors assigned in the petition in error filed herein, and the court having carefully considered said cause finds that there was no error in the proceedings of the court of common pleas in overruling the motion of defendant therein to set aside the return of the sheriff and dismiss the cause, but the court do find that said proceedings in said court of common pleas *was* regular and in accordance with law, and hereby affirm the same.

It is therefore considered and adjudged by the court that the proceedings in the court of common pleas in overruling plaintiff in error's motion be and the same hereby is affirmed and that defendant in error recover from the plaintiff in error his costs herein taxed, and that plaintiff in error pay his own costs, for which execution is awarded, and to the said finding and the said judgment of the court, the plaintiff in error excepts.

April 24th, 1900, mandate sent to common pleas court.

Common Pleas Court.

April 24th, 1900.—Mandate filed and is in words and figures following, to-wit:

Mandate from the Circuit Court.

THE STATE OF OHIO, } ss:
Trumbull County, }

Circuit Court.

At a term of the circuit court, within and for the county of Trumbull, in the State of Ohio, begun and holden before Hon.
17 W. W. Frazier, Hon. P. A. Laubie, Hon. J. B. Burrows, presiding judges, at Warren, on the 3rd day of April, A. D. 1900, among other proceedings then and there had by and before said court, as appears on its journal, were the following, to-wit:

FRANK M. CURRIE } No. 348.
vs.
EDWARD JASTER, SR. }

This cause came on to be heard to the court on the petition in error and was argued by counsel and submitted to the court on the errors assigned in the petition in error, filed herein, and the court having carefully considered said cause finds there was no error in the proceedings of the court of common pleas in overruling the motion of defendant therein to set aside the return of the sheriff and dismiss the cause, but the court do- find that said proceedings in the court of common pleas were regular and in accordance with law, and hereby affirms the same. It is therefore considered and adjudged by the court that the proceedings in the court of common pleas in overruling plaintiff in error's motion be and the same hereby is affirmed and that defendant in error recover from the plaintiff in error his costs herein taxed and that plaintiff in error pay his own costs, for which execution is awarded and to the said findings and the said judgment of the court the plaintiff in error excepts.

Ordered that a special mandate be sent to the court of common pleas of said county to carry this judgment into execution.

Ordered that a copy of this entry be certified to the clerk of the court of common pleas for said county for entry, etc.

18 I, W. B. Swager, clerk of the circuit court of Ohio, within and for Trumbull county, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court *court*.

Witness my hand and the seal of said court, this 24th day of April, 1900.

[SEAL.] W. B. SWAGER, *Clerk*.

THE STATE OF OHIO, } ss:
County of Trumbull, }

Circuit Court of Ohio within and for said County.

To the honorable court of common pleas within and for said county, Greeting:

We do hereby command you that you proceed without delay to carry into execution the within and foregoing judgment of your circuit court in the case of Edward Jaster, Sr. *vs.* Frank M. Currie *et al.*

Witness, W. B. Swager, clerk of our circuit court, at Warren, Ohio, this 24th day of April, 1900.

[SEAL.] W. B. SWAGER, *Clerk*.

Journal 44, page 10, May term, 1900, A. D. 1900, viz., May 9th.

This cause coming to the court on special mandate from the circuit court of said Trumbull county, and it appearing to the court that the defendant is in default for answer or demurrer and that he does not wish to plead herein, and said cause then comes on to be heard to the court, jury herein being waived, and the court
19 finds that the allegations in the petition are confessed by the said defendant to be true and that the said defendant is indebted on the several causes of action stated in the petition as therein set forth in the amount of $861.00.

It is, therefore, considered and adjudged by the court that the plaintiff recover from the defendant, Frank M. Currie, the said sum of eight hundred, sixty-one dollars and his costs herein taxed and execution is awarded.

Authenticated Copy of Record.

THE STATE OF OHIO, }
Trumbull County, } ss:

I, W. B. Swager, clerk of the court of common pleas within and for said county of Trumbull and State of Ohio, having the custody of the files, journals, and records of said court, the said court being a court of record and of general jurisdiction, do hereby certify that the foregoing is a full and true copy of the complete record of the proceedings of the said court of common pleas in the cause No. 7095, wherein Edward Jaster, Sr. was plaintiff and F. M. Currie, *et al.* were defendants, as the same remains of record at page 574 of vol. 114, Law Records of said county, in my office and in my custody.

Witness my hand and the seal of said court at Warren, Ohio, this 14th day of August, A. D. 1900.

W. B. SWAGER, *Clerk.*

10 doc. stamp and seal.

STATE OF OHIO, }
Trumbull County, } ss:

I, Thomas T. Gillmer, one of the judges of the court of common pleas, within and for the 2nd sub-division of the 9th judi-
20 cial district of the State of Ohio, which said sub-division includes the said Trumbull county, the said court being a court of record, and of general jurisdiction, do hereby certify that the said W. B. Swager whose genuine signature is attached to the foregoing certificate, was at the time of making and subscribing said certificate, and is now clerk of said court of common pleas, within and for said county of Trumbull, duly commissioned and sworn, and is the officer in whose custody said record is required to be kept by the laws of the State of Ohio, and is authorized by the law of said State to certify as aforesaid, and that his attestation aforesaid is in due form of law, and that to all acts so done by him full faith and credit are and ought to be given.

Signed by me and dated, at Warren, Ohio, this 14th day of August, A. D. 1900.

THOMAS GILLMER,
Judge as Aforesaid.

10 cent doc. stamp.

THE STATE OF OHIO, }
Trumbull County. }

I, W. B. Swager, clerk of the court of common pleas, within and for said county, do hereby certify that the Hon. T. I. Gillmer, whose

genuine signature is attached to the within certificate was at the time of subscribing the same and now is one of the judges of the court of common pleas within and for the 2nd subdivision of the 9th judicial district of the State of Ohio, which said sub-division includes the said Trumbull county, duly commissioned and qualified, and is now acting as such, and that full faith and credit are and ought to be given to all his official acts as such.

Witness my hand and the seal of said court, at Warren,
21 Ohio, this 14th day of August, A. D. 1900.

W. B. SWAGER, *Clerk.*

10 cent doc. stamp and seal.
From Record 114, page 574.

The plaintiff, therefore, prays judgment against the defendant for the sum of $861.00 with interest from May 9th, 1900, at the rate of ten per cent. per annum and costs of suit, taxed at $100.00, and all costs of this suit.

EDWARD JASTER, Sr.,
By SIMON CAMERON,
His Attorney.

STATE OF NEBRASKA, } ss:
Custer County, }

Simon Cameron, being first duly sworn on oath, says that he is attorney for the plaintiff in the above entitled action, that the plaintiff is a non-resident of the State of Nebraska and is absent therefrom; that the facts set forth in the foregoing substituted amended petition are true as he verily believes.

SIMON CAMERON,
Attorney for Plaintiff.

Subscribed and sworn to before me this 7th day of June, 1902.
[SEAL.]

C. T. ORR,
Clerk Dist. Court.

Filed January 30th, 1901, and refiled June 7th, 1902.

In the District Court of Custer County, Nebraska.

WILLIAM JASTER, Sr., Plaintiff,
vs.
F. M. CURRIE, Defendant. } Amended Answer.

22 Comes now the defendant in the above entitled action and for his amended answer to the amended petition of plaintiff filed herein, denies each and every allegation in said petition contained, save and except such as are in the manner hereinafter specifically admitted, and denies that the facts alleged in said petition constitute a cause of action.

Further answering. this defendant denies that there is due from this defendant to the said plaintiff the sum of $861.00, or any other sum whatever, and denies that he is indebted to the said plaintiff in any amount or upon any cause of action whatever.

Further answering, and for further defense to said action, this defendant alleges the fact to be that at the time of the commencement of this action in the court of common pleas in the county of Trumbull, State of Ohio, in which the pretended judgment described in plaintiff's petition was rendered, this plaintiff was a resident of Custer county, in the State of Nebraska, and had been a continuous resident of said county of Custer in the State of Nebraska, for a period of more than eight years and is still and always has been, since he first moved to the county, a *bona fide* resident of this county.

This defendant alleges the fact to be that said court of common pleas within and for said county of Trumbull, State of Ohio, which rendered said pretended judgment upon which this suit is brought, had no jurisdiction over the person of this defendant at the time said pretended judgment is claimed to have been rendered.

That about the 28th day of December, 1898, the said plaintiff in this suit brought an action in the district court of Custer county, Nebraska, against this defendant, together with William Perkins and Amos Perkins, the object and prayer of which action were to obtain a judgment against said William and Amos Perkins, as makers and this defendant as an endorser, was upon the identical notes upon which the pretended judgment was rendered, upon which plaintiff sues in this action.

23 That on June 5th, 1899, this defendant filed his separate answer in said action in said district court of Custer county, Nebraska.

That afterwards and on the 3rd day of August, 1899, said plaintiff coused to be served a notice upon the attorney of this defendant, that said plaintiff would take deposition of said Edward Jaster, Sr., before E. A. Reed, at Vernon, in said Trumbull county, in the State of Ohio, on the 5th day of September, 1899, between the hours of 10 o'clock a. m. and six o'clock p. m., which depositions was to be used in the trial of said action then pending in the district court of Custer county, Nebraska.

The defendant shows to the court that C. L. Gutterson was his attorney employed by him in the defense of said suit in Custer county, Nebraska, and that said attorney advised this defendant to go to the State of Ohio and be in attendance at the takeing of said depositions of said Edward Jaster, Sr., pursuant to said notice, and that this defendant in pursuance of said advice and for the express and only purpose of attending the takeing of the depositions of said Edward Jaster, Sr., *he* went to the State of Ohio and arrived in Trumbull county on the 4th day of September, 1899, and on the 5th day of September, 1899, the same being the day upon which deposition was to be taken, this defendant attended, before said notary public,

the taking of said deposition, and procured counsel to appear with him at the taking of said deposition.

That it was during the time between the taking of said deposition and the time that this defendant took the said train to leave for the State of Nebraska, that summons was served upon this defendant, in said action in Trumbull county, in which said pretended judgment was rendered.

24 That after completing the taking of said depositions on the evening of September 5th, 1899, this defendant went to the hime of his father near Latimer, in said Trumbull county, State of Ohio.

Defendant further states that he is and has been for years subject to attacks of nervous and sick headaches, and that they are usually caused from nervous excitement or by exhaustion from long journeys and other over-exertions.

Defendant further states that on the evening of the said 5th day of September, he suffered severely from one of these attacks, and that he spent the night with his father near Latimer, Trumbull county, Ohio.

That on the 6th day of September, he went to Latimer crossing, which was the nearest railway station, for the purpose of returning to the State of Nebraska, and after consulting the railroad time table and talking to the agent as to the best and most expeditious route by which he could return to his home in Nebraska, he learned that the through train from Pittsburg to Ashtabula, if it could be stopped at Latimer, would afford him the most expeditious means of making the return trip to Nebraska, and that he would save time by taking said train instead of any other train that he could take.

That he then and there asked the agent to telegraph to headquarters to try to have the train stopped at Latimer that he might take the same. That said agent informed him that it was *them* too late that day and it would be impossible to secure the stoppage of said train so that he might take it that day. But upon request of this defendant said agent agreed that he would make arrangements and get permission from headquarters to stop said train on the 7th day of September.

25 That pursuant to the request of this defendant and the permission of said agent, train No. 218, being a through train, from Pittsburg, Pa., to Ashtabula, Ohio, was stopped at Latimer crossing at 1:17 on the night of September 7th, or rather on the morning of September 8th, 1899, to allow this defendant to board said train.

That said train arrived at Ashtabula in time to make connections with train No. 15 on the Lake Shore and Michigan Southern railway, bound for Chicago and said connection was made at Ashtabula within a few moments after reaching Ashtabula upon said train number 218, this defendant took said train number 15, on said Lake Shore and Michigan Southern railway and arriving in Chicago about 3 o'clock in the afternoon of September 8th, this de-

fendant then took the earliest train on the Burlington road which left Chicago at 5:50 in the evening of September 8th and arrived in Omaha at 8:05 on the morning of September 9th.

This defendant then took the train at Omaha at 8:40 a. m. and arrived at Arcadia, Nebraska, at 4:45 on the evening of September 9th.

That he there hired a team and drove fourteen miles to Wescott Nebraska, and there he hired a saddle horse and rode six miles to his ranch where his family was then living.

This defendant further alleges that he was informed by the railroad agent at Latimer, and that he also learned from the railroad time table and time cards which he consulted that there was no other train that he could have taken on the 6th and have made as quick time as by taking train number 218, which train he did take. Had he taken any of the other trains which passed through Latimer except the one he did take, he would have been laid over and have had to wait at Ashtabula and at Chicago, so that he would not have arrived home so soon into a day as by waiting until the 7th
26 in order to get the through train from Pittsburg. In other words, that the delay in Trumbull county, Ohio, made by this defendant in order to take said train number 218 hastened his arrival in Nebraska one day.

This defendant further alleges the fact to be that he made no unnecessary delay or any delay whatever in immediately leaving the State of Ohio to return to the State of Nebraska after he had attended the taking of said depositions, and that in going to the State of Ohio from the State of Nebraska he only spent the necessary time in the State of Ohio to properly look after and guard his interests in the taking of said depositions, which was taken for the purpose of being used in the action aforesaid, which was brought in the district court of Custer county, Nebraska, and, therefore, this defendant alleges that said court by reason of the service of said summons upon this defendant, while this defendant was in the State of Ohio and in the county of Trumbull for the sole and only purpose of attending judicial proceedings, to-wit: the taking of said depositions in said case pending in said district court of Custer county, Nebraska, had no jurisdiction whatever over the person of this defendant.

This defendant further alleges the fact to be that he never at any time entered a general appearance in said suit brought in Trumbull county, State of Ohio.

For a further defense this defendant shows to the court that this defendant is now and for over eleven years last past has been a continuous and *bona fide* resident of the county of Custer and State of Nebraska.

That in September, 1899, there was pending in the district court of Custer county, Nebraska, an action in the name of Edward Jaster, Sr., plaintiff, against William Perkins and Amos Perkins and this defendant, in which said action judgment was asked upon the iden-

tical cause of action upon which the judgment described in plaintiff's petition was attempted to be rendered.

27 That in said action in said Custer county, Nebraska, this defendant had filed an answer setting up a defense to said suit.

That in said action pending in said Custer county, Nebraska, this defendant had employed C. L. Gutterson as his attorney to defend said sut.

That on the 3rd day of August, 1899, a notice was served upon said attorney of this defendant by the plaintiff or the plaintiff's attorneys giving notice that the deposition of said Edward Jaster, Sr., would be taken at Vernon, in Trumbull county, State of Ohio, before E. A. Reed, on the 5th day of September, 1899.

That said deposition was to be used in the trial of said action pending in the district court of Custer county, Nebr.

This defendant alleges the fact to be that the service of notice to take said deposition was done fraudulently and willfully for the fraudulent purpose of enticing and inducing this defendant to go to the State of Ohio that said plaintiff might obtain service upon him in said State and try the issues in said action in the State of Ohio, instead of in the State of Nebraska.

That the action then pending in the district court of Custer county, Nebraska, was brought upon promissory notes which had been executed by the said Amos Perkins and William Perkins to this defendant and assigned and endorsed by this defendant to the said plaintiff herein, and the suit in Trumbull county, Ohio, in which the pretended judgment alleged in plaintiff's petition in this action was tendered was brought upon the identical notes upon which the action was brought here in Custer county, Nebraska.

That said notice to take said depositions of the said Edward Jaster, Sr., was simply a ruse and was given for the purpose of misleading and inducing and enticing this defendant to go to

28 the said county of Trumbull and within the jurisdiction of the court of common pleas of Trumbull county, Ohio, and for the fraudulent purpose of attempting to get service in said State of Ohio upon this defendant and for no other reason.

This defendant further shows to the court that this defendant was ignorant of the fact that a fraud had been perpetrated upon him and believed that said notice to take said deposition was given in good faith by the plaintift, but this defendant did not discover that he had been imposed upon and fraudulently decoyed into the said State of Ohio by the said plaintiff by means of said notice to take said depositions for the fraudulent purpose of having said process served upon him until long after this defendant had filed the special appearance in said case brought against him in Ohio and after said special appearance had been submitted to the said court in the State of Ohio.

And this defendant alleges that by reason of his not discovering said fraud perpetrated upon him by the said plaintiff that he had

no opportunity to present to said court in Ohio the fact that he had been fraudulently deceived and decoyed into said State of Ohio for the fraudulent purpose of having said process served upon him.

This defendant further shows to the court that he now and always has had a valid defence to said notes which defence is as follows:

That said plaintiff is a resident of Trumbull county, Ohio, and that this defendant formerly lived in Trumbull county, Ohio, and was a neighbor and friend and acquaintance of said plaintiff.

This defendant further alleges that prior to the year 1889
29 the said plaintiff had loaned and invested certain moneys in Custer county, Nebraska, and that the same had been loaned for said plaintiff by plaintiff's son, who at that time lived in Custer county, Nebraska.

That about the year 1889, said son died and the said plaintiff came to this State and asked this defendant to look after his interests in said Custer county, and instructed this defendant that he desired that his moneys which were already invested in this State should be reloaned and kept at interest in this county.

That it was then and there agreed between the plaintiff and this defendant that this defendant take charge of the collection of the notes of said plaintiff, which said plaintiff then had for money which had been loaned in this county, and when the same should be collected by this defendant that the proceeds thereof should be reinvested by loaning the same, and it was then and there explained to the plaintiff by this defendant that this defendant was engaged in loaning money and that ofteimes he had notes of his own which were good and it was then and there agreed that at any time that this defendant saw fit that instead of sending new notes to the plaintiff that this defendant might send notes that he had himself against parties in liey of reloaning the money of said plaintiff.

The defendant alleges that the three notes sued upon were taken by this defendant from the said defendants Perkins and that said three notes were secured by a chattel mortgage on 14 head of horses and a considerable amount of farm machinery and implements, and was also secured by a second mortgage upon real estate and that at the time the same were taken, and long afterwards, said
makers of said notes, Amos Perkins and William Perkins,
30 had the reputation of promptly paying their debts and obligations, and were perfectly solvent and abundantly able to meet their obligations.

And this defendant alleges that at the time said notes were taken and at the time all of them matured there were perfectly good and collectible.

This defendant further alleges that shortly after said plaintiff had come to the county of Custer and placed his said business in the hands of this defendant, that this defendant made a collection for said plaintiff and in pursuance to his agreement with the said plaintiff he endorsed the three notes sued upon in this action and sent them to the plaintiff at his home in Ohio, together with the mort-

gages securing the same and explained the transaction and that said plaintiff expressed himself as perfectly satisfied with the same.

This defendant further alleges that it was distinctly agreed between this plaintiff and this defendant at the time this defendant agreed to handle the money of said plaintiff as his agent that in all cases where this defendant should turn over and endorse and deliver notes to the said plaintiff which this defendant had taken in his own name that there should be no personal liability as between said plaintiff and this defendant by reason of this defendant endorsing said notes so turned over to this plaintiff.

And this defendant alleges that there was no consideration whatever for the endorsing of said notes so endorsed by this defendant.

And this defendant further states that he has never received any remuneration whatever for services rendered, either for the collection of money above mentioned nor for reloaning the same.

31 Defendant further alleges the fact to be that since said notes so endorsed by him matured he has seen the plaintiff and visited with him, both in this State and in the State of Ohio, where the plaintiff resides, and that plaintiff never at any time intimated to this defendant that he should in any way look to this defendant for the said notes or any part thereof.

This defendant further shows to the court that at the time said notes were taken and at the time the same were endorsed over to the plaintiff, and at the time the same matured, the said chattel mortgage securing the said notes *were* abundant security and that the 14 head of horses which were included in said mortgage were of the reasonable value of $1000.00, and the farm machinery which was also covered by said mortgage was of the reasonable value of $500.00 and at the time said notes matured, that said security was good.

This defendant further alleges that after the first of said notes became due that he frequently advised said plaintiff to insist upon the payment of the same from the makers of the said notes or in case they did not pay them to foreclose said chattel mortgage.

Defendant further alleges that had said plaintiff used reasonable diligence in the collection of said notes or in the foreclosure of said mortgage, that said notes could have easily been collected and that the property covered by said chattel mortgage was ample and sufficient to pay the same, had the plaintiff exercised reasonable diligence in the collection of the same.

That by reason of the neglect of said plaintiff in the collection of said notes and the foreclosure of said chattel mortgage most of said personal property has been disposed of and is beyond the reach of said chattel mortgage.

Defendant, further answering, admits the allegations contained in paragraph 3 of said amended petition and admits that said allegations in said paragraph 3 truly and correctly show the record

32 of the proceedings in said court of common pleas and circuit court of said Trumbull county and in said supreme court of

Ohio, and that said court of common pleas is a court of record and general jurisdiction.

Wherefore, this defendant prays that said action may be dismissed and that it be the judgment of the court that this defendant go hence without day and that he have judgment against plaintiff for his costs in this action expended.

C. L. GUTTERSON,
Attorney for Defendant.

STATE OF NEBRASKA, } ss:
Custer County, }

C. L. Gutterson, being first duly sworn, deposes and says that he is the attorney for the defendant, F. M. Currie, named in the above entitled action; that said Currie is absent from the county of Custer.

Affiant further states that he knows the contents of the foregoing amended answer and believes the facts therein stated to be true.

C. L. GUTTERSON.

Subscribed in my presence and sworn to before me this 30th day of January, 1901.

[SEAL.] C. T. ORR,
Clerk Dist. Court.

And on the 7th day of June, 1902, there was filed the following demurrer by the plaintiff, to-wit:

In the District Court of Custer County, Nebraska.

33 EDWARD JASTER, JR., Plaintiff, vs. F. M. CURRIE, Defendant. } Demurrer to Amended Answer.

Comes now the plaintiff and demures to the amended answer of the defendant for the reason that the facts therein stated do not constitute a defense to plaintiff's cause of action, as set forth in his amended answer filed June 7th, 1902.

EDWARD JASTER, SR.,
By SIMON CAMERON,
His Attorney.

In the District Court of Custer County, Nebraska.

EDWARD JASTER, SR., Plaintiff, v. F. M. CURRIE, Defendant. } Journal Entry.

And now on this 7th day of June, 1902, again came the parties to this action by their attorneys and this cause coming on again to be

heard on the demurrer of plaintiff to amended answer of defendant, was argued by counsel, and the court being fully advised in the premises.

It is ordered that said demurrer be and the same is hereby overruled, to which ruling and decision of the court, plaintiff then and there duly excepted, and the plaintiff electing to stand on
34 his demurrer and declining to plead further,

It is, therefore, considered by the court that the defendant go hence without day and recover his costs, taxed at the sum of $16.80.

To all of which plaintiff excepts.

Court adjourned to meet June 30th, 1902.

STATE OF NEBRASKA, } ss:
Custer County, }

I, C. T. Orr, clerk of the district court of the twelfth judicial district, held in and for the county of Custer and State of Nebraska, do hereby certify that the above and foregoing is a true, correct and complete copy of the substituted amended petition, the amended answer and the demurrer of the plaintiff to the amended answer, and the ruling of the court thereon, all in the case of Edward Jaster, Sr., plaintiff, *vs.* F. M. Currie, defendant, as thes same appears on the files and of record in my office in said case.

Witness my hand and the seal of said court hereunto attached, this 1st day of July, A. D. 1902, at Broken Bow, Nebr.

C. T. ORR, *Clerk Dist. Court,*
[SEAL.] By GERTRUDE G. ORR, *Deputy.*

Endorsed: 12840. Edward Jaster, Sr., *v.* F. M. Currie. Transcript. Supreme court of Nebraska. Filed Aug. 4, 1902. Lee Herdman, clerk.

And on the same day there was made to issue out of the office of the clerk of said supreme court a certain summons in the words and figures following, to-wit:

35 *Summons in Error.*

THE STATE OF NEBRASKA, *ss:*

To the sheriff of the county of Custer:

You are hereby commanded to notify F. M. Currie that a petition in error has been filed in the supreme court of Nebraska by Edward Jaster, Sr. asking the reversal of a judgment against him rendered on the 7th day of June, 1902, in a certain cause in the district court of Custer county, wherein the plaintiff herein was plaintiff and the

defendant herein was defendant and to appear before the supreme court, at the city of Lincoln, on the 16th day of September, 1902, then and there to do and receive what the said supreme court shall order in the premises.

You will make due return of this summons on or before the 16th day of September, 1902.

Witness my hand and the seal of said court, at the city of Lincoln, this 4th day of August, A. D. 1902.

[SEAL.] LEE HERDMAN, *Clerk.*

And afterward, to-wit, on the 11th day of August, A. D. 1902, said summons heretofore issued out of the office of the clerk of said supreme court was returned and filed therein with service endorsed thereon as follows:

THE STATE OF NEBRASKA, } ss:
Custer County, }

Service of copy waived and I hereby accept due and personal service of this summons August 7th, 1902.

F. M. CURRIE,
Def't in Error,
By C. L. GUTTERSON,
His A'tty.

36 Endorsed: General No. 12840. Supreme court, State of Nebraska. Edward Jaster, Sr. *v.* F. M. Currie. Summons in error. Supreme court of Nebraska. Filed Aug. 11 1902. Lee Herdman, clerk.

And afterward, to-wit, on the 17th day of March, A. D., 1903, there was rendered by said supreme court and entered of record upon the journal thereof a certain order in the words and figures following, to-wit:

EDWARD JASTER, SR., Plaintiff in Error, } No. 12840. Error to the District Court of Custer County.
v.
F. M. CURRIE, Defendant in Error. }

Upon application of the defendant in error, by E. J. Clements his attorney, it is by the court ordered that he have one week in which to serve and file his briefs.

And afterward, to-wit, on the 7th day of April, the following proceedings were had and done in said supreme court, to-wit:

The following causes *were* argued and submitted: O. A. Abbott, appearing for plaintiff in error, E. J. Clements, appearing for defendant in error.

JASTER
v.
CURRIE. } Error to Custer County.

And afterward, to-wit, on the 6th day of May, A. D., 1903, there was rendered by said supreme court and entered of record upon the journal thereof a certain judgment in the words and figures following, to-wit:

EDWARD JASTER, SR., Plaintiff in Error,
37 v.
F. M. CURRIE, Defendant in Error. } No. 12840. Error to the District Court of Custer County. Judgment of Affirmance.

This cause came on to be heard, was taken up and argued by counsel, on consideration whereof the court finds there is no error apparent on the record in the proceedings and judgment of the district court. It is, therefore, considered by the court that said judgment be and the same is hereby affirmed; that the defendant in error have and recover of the plaintiff in error his costs herein, taxed at $—, for which execution is hereby awarded; that said plaintiff in error pay his own costs, taxed at $—, and that a mandate issue accordingly.

And on the same day there was rendered by said supreme court and filed in the office of the clerk thereof a certain opinion in the words and figures following, to-wit:

38 *Opinion. Filed May 6, 1903.*

JASTER
v.
CURRIE. } No. 12840.

1. In an action on a judgment of a sister State it is competent for the defendant to show that he was induced by the fraudulent conduct of the plaintiff to come within the jurisdiction of the court rendering the judgment.
2. Full faith and credit is not denied the judgment of a sister State by permitting the defendant in an action on such judgment to show that jurisdiction of his person was fraudulently obtained.
3. The rule requiring each State to give full faith and credit to the judicial proceedings of every other State will not shield a judgment of a sister State from attacks that might have been made upon it in the State where it was rendered.

4. A party who has been induced by the fraud of his adversary to go into a jurisdiction other than that of his residence for the purpose of being there served with process need not appear specially and move to quash the service. He may entirely ignore the proceeding without waiving his right to defend against the judgment.
5. If a party has been fraudulently brought within the jurisdiction of a court for the purpose of serving process upon him the
39 service is not lawful even though he might, by exercising diligence, have gotten out of the jurisdiction after the fraud ceased to be operative and before the process was served.
6. Where the rights of innocent third parties are not involved it is permissible to show by parol evidence that the contract between the indorser and indorsee of a promissory note was different from that which results by legal implication from a blank indorsement.

40 SULLIVAN, *C. J.*:

This was an action on a judgment recovered by the plaintiff, Edward Jaster, Sr., against the defendant, Frank M. Currie, in the court of common pleas of Trumbull county, Ohio. The answer of the defendant among other things alleges that he was not indebted to the plaintiff; that he did not appear generally in the action; and that he was decoyed into the jurisdiction of the Ohio court for the purpose of being there served with process. A general demurrer to the answer was overruled and judgment on the merits given in favor of the defendant.

The contention of Jaster, based upon Christmas *v.* Russell, 5 Wall. 290, and other decisions of the Supreme Court of the United States, is that fraud in inducing the defendant to come within the jurisdiction of the Ohio court where an unjust judgment was recovered against him, is not available in an action brought upon that judgment in this State. This court is committed to a contrary doctrine. In Eaton *v.* Hastey, 6 Nebr., 419, it was expressly held that fraud is a good defense to an action brought on a judgment of a sister State. The same conclusion was reached in Keeler *v.* Elston, 22 Nebr., 310, and the doctrine was reaffirmed in Snyder *v.* Critchfield, 44 Nebr., 66, although the question was not involved in that case. The plaintiff insists, however, that the doctrine of the foregoing cases is in conflict with section 1, art. 4, of the Federal Constitution, and the act of Congress made in pursuance thereof, which require each State
41 to give full faith and credit to the judgments of every other State. Many authorities may be cited which apparently sustain the plaintiff's position, but upon examination it will be found that they emanate from jurisdictions where the distinction between actions at law and suits in equity is strongly maintained and enforced, and where an equitable defense is not recognized nor allowed in an action at law. In this State the distinction between

actions at law and suits in equity is abolished by statute, and to an action on a legal demand the defendant may interpose any defense he may have, whether the same be legal or equitable. The constitutional provision and act of Congress, above referred to, require nothing more than that the judgment shall be given precisely the same effect in every other State, that it has in the State where it was rendered. Hanley *v.* Donogue, 116 U. S., 1; French *v.* Pease, 10 Kas., 51; Simons *v.* Clark, 56 Ill., 96; McLaren *v.* Kehler, 8 Am. Rep., 592. In other words, in an action on a judgment of a sister State it has all the advantages and none other than it would have were it sought to be enforced in the State where it was rendered. Neither the Constitution of the United States, the laws of Congress nor any rule of commity require the courts of this State to shield a judgment from attacks that might have been successfully made upon it in the State where it was rendered. Wood *v.* Watkinson, 17 Conn., 500, 44 Am. Dec., 562, 16 Am. St. Rep., 782;
42 Taylor *v.* Barron, 30 N. H., 78; 764 Am. Dec., 281; Bank of Chadron *v.* Anderson 48 Pac. Rep. (Wyo.), 197; Warrington *v.* Ball, 90 Fed. Rep., 465.

This being true, when the plaintiff sought to enforce his judgment in this State, the defendant had the same right to look for relief to the courts exercising equity jurisdiction in this State that he would have had to look to a court of equity of the State of Ohio, had the plaintiff sought to enforce it there. Under our system of pleading it was not necessary that he should institute an original action for relief. The Code of Civil Procedure is designed to prevent circuity of action and to prevent multiplicity of suits. Any grounds that he could have urged in an action instituted by him to obtain relief from the judgment are available as a defense to an action brought to enforce such judgment. The following cases, we think, fully sustain this conclusion: Toof *v.* Foley, 87 Ia., 8; Dunlap *v.* Cody, 31 *Id.*, 260; Pilcher *v.* Graham, 18 Ohio (C. R.), 5; Abercombie *v.* Abercrombie, 67 Pac. Rep., 539; Wood *v.* Wood, 78 Ky., 629; Mark *v.* Fore, 51 Mo., 691. In most, if not all, of the cases just cited, the fraud consisted, as it does in this case, in decoying the defendant within the jurisdiction of the court rendering the judgment.

The plaintiff further contends that the answer fails to show a defense to the notes, upon which the judgment is based. We need not stop to enquire whether in order to obtain relief from a
43 judgment obtained by fraud it is necessary to show a defense to the action in which such judgment was rendered. Whether necessary or unnecessary, the defendant has in his answer stated a valid defense to the action brought in the State of Ohio. It is true that such defense involves contradicting the contract which the law implies, over his endorsement of the notes upon which the action was based. But this court is thoroughly committed to the doctrine that that may be done, so long as the rights of innocent third parties are not involved. Whitney *v.* Spearman, 50 Nebr., 617; Holmes

v. Bank, 38 Nebr., 326; True v. Ballard, 45 Nebr., 409; Corbett v. Fetzer, 47 Nebr., 269.

It is said that the question of the jurisdiction of the court of common pleas over the defendant was raised in that court by a motion to quash the service of summons and that the question was adjudged in favor of the plaintiff and can not be again litigated. The answer alleges that at the time the motion to quash was presented and determined defendant did not know that plaintiff had been guilty of any fraudulent conduct, and it appears quite clearly from the petition in this case that the special appearance was made only for the purpose of challenging the validity of the service of the summons on the ground that defendant was in Ohio for the purpose of attending the taking of depositions and therefore exempt from service of judicial process. That objection, if not interposed before judgment would, of course, have been waived.

44 But the objection that jurisdiction was fraudulently obtained was one which, according to the authorities, defendant was under no obligation to present to the Ohio court. He was not obliged to litigate any question in a court whose jurisdiction over him was obtained by deception and trickery. This is the doctrine implied in all the cases holding that fraud in obtaining jurisdiction is a good defense to an action on a judgment of a sister State.

To the suggestion that if the defendant had been diligent he might, after the depositions had been taken, have gotten out of Ohio without being served with summons it is only necessary to say that want of diligence on the part of defendant could not change the quality of plaintiff's conduct nor entitle him to retain any advantage gained by fraud. Townsend v. Smith, 47 Wis., 623.

The judgment is right and is affirmed.

45 Thereupon, on the 18th day of June, A. D., 1903, there issued out of said court a certain mandate.

And afterwards, to-wit, February 10, A. D., 1904, there was filed in the office of the clerk of said supreme court a certain petition for writ of error in the words and figures following, to-wit:

46 In the Supreme Court of the State of Nebraska.

EDWARD JASTER, SR., Plaintiff in Error,
vs.
F. M. CURRIE, Defendant in Error.
} Petition for Writ of Error.

To the Honorable Silas A. Holcomb, chief justice of the supreme court of the State of Nebraska:

Your petitioner, Edward Jaster Sr., plaintiff in error, respectfully represents and shows unto your honor that he is a citizen and resident of the State of Ohio and was a citizen and resident of said State at all the dates and times hereinafter mentioned and that said F. M.

Currie, defendant in error, was during all of said time a citizen and resident of the State of Nebraska.

Your petitioner further represents that on the sixth day of May A. D., 1903 in the above entitled suit and in the supreme court of the State of Nebraska a judgement was rendered against your petitioner and in favor of the said F. M. Currie, defendant in error, which judgment is final and that said court is the highest court and court of final resort in the State of Nebraska in which a decision in said cause could be had or made; a transcript of the record and proceedings in said court is herewith submitted.

Your petitioner further alleges that there was involved in said cause and necessary to its determination the validity, force and effect of a judgement in favor of your petitioner and against the defendant in error rendered by the court of common pleas of the county of Trumbull in the State of Ohio in a suit in said court of Ohio between the same parties upon personal service duly had upon said defendant in said county of Trumbull in the State of Ohio, which said judgement was duly pleaded by your petitioner as the basis of his suit and his cause of action in the State of Nebraska and
47 that the validity, force and effect of said judgement in the State of Nebraska was challenged by the defendant in error by his plea and answer wherein he alleges that service upon him in said Ohio court was unlawfully and fraudulently obtained in said Trumbull county, Ohio which said plea and answer of the defendant in error was upon the demurrer of your petitioner by the said supreme court of the State of Nebraska held to be good and said judgement as against said plea and answer held to be of no force effect and validity in the State of Nebraska in disregard to section one (1) of article four (4) of the Constitution of the United States and the decisions of the Supreme Court of the United States thereunder.

Your petitioner further represents that the decision of the supreme court of Nebraska was against the validity, force and effect of the Ohio judgement and that such decision against said Ohio judgement was necessary to the judgement of the supreme court of Nebraska and that without such decision against the validity, force and effect of the Ohio judgement said judgement against your petitioner could not have been rendered by the supreme court of Nebraska.

Your petitioner further represents that under and by reason of the decision of the supreme court of Nebraska denying that validity, force and effect of the Ohio judgement he has been denied the protection of section one (1) of article four (4) of the Constitution of the United States and is without remedy in the premises except through and by the interposition of the Supreme Court of the United States in his behalf.

Wherefore, your petitioner prays the allowance by your honor of a writ of error to the supreme court of Nebraska to remove the record and proceedings in said suit into the Supreme Court of the United States for its revision thereof and for a citation directed to

the said F. M. Currie for his appearance in the said Supreme Court of the United States to the end that said judgement of said supreme court of Nebraska may be reversed and your petitioner restored to all things he has lost thereby and for his costs about this suit in his behalf expended.

O. A. ABBOTT,
Att'y for Pl'ff in Error.

48 Writ of error and citation in the within case allowed this 10th day of February A. D. 1904.

SILAS A. HOLCOMB,
Chief Justice of the Supreme Court of the State of Nebraska.

49 [Endorsed:] 12840 In supreme court Neb. Edward Jaster Sr. *vs.* F. M. Currie. Petition for writ of error to Supreme Court U. S. Supreme court of Nebraska. Filed Feb. 10 1904. Lee Herdman, clerk. O. A. Abbott att'y for pl'ff in error.

50 And on the same day there was filed in the office of the clerk of said supreme court of Nebraska a writ of error in said cause from the United States Supreme Court.

51 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court State of Nebraska, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Nebraska before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Edward Jaster Sr., plaintiff and F. M. Currie defendant, wherein was drawn in question the force and validity of a judgement rendered in the court of common pleas in the county of Trumbull, in the State of Ohio and the force and validity of such judgement in the State of Nebraska under section one (1) of article four (4) of the Constitution of the United States and the decision was against the force and validity of such judgement in the State of Nebraska a manifest error hath happened to the said Edward Jaster Sr., as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf do command you that if judgement be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same in said Supreme Court at Washington within

thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error whatever of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of February in the year of our Lord nineteen hundred and four.

[Seal United States Circuit Court, District of Nebraska.]

GEO. H. THUMMEL,
Clerk of U. S. Circuit Court for the District of Nebraska.

52 Clerk of the Circuit Court of the United States for the District of Nebraska.

Allowed by

SILAS A. HOLCOMB,
Chief Justice of the Supreme Court of Nebraska.

53 [Endorsed:] 12840 In supreme court Neb. Edward Jaster Sr. *vs.* F. M. Currie Writ of error Supreme court of Nebraska. Filed Feb. 10 1904 Lee Herdman clerk. O. A. Abbott att'y for pl'ff in error.

54 And on the 23rd day of February, A. D., 1904, there was filed in the office of the clerk of said supreme court of Nebraska, a citation, directed to F. M. Currie, citing and admonishing him to be and appear at a Supreme Court of the United States within thirty days from February 10th, 1904, with service of same attached thereto.

55 UNITED STATES OF AMERICA, } ss:
State of Nebraska, County of Lancaster, }

J. C. Deweese being by me first duly sworn on his own oath states that he delivered a true copy of the within citation to E. J. Clements in said county on the 22nd day of February in the year of our Lord one thousand nine hundred and four and further saith not—

Subscribed in my presence by the said J. C. Deweese and sworn to before me this 22nd day of February A. D. 1904. Witness my hand and notarial seal the date last above written.

{ Notarial Seal of S. K. Kier, Lancaster County, Nebraska. Commission expires Jan. 14, 1910. }

S. K. KIER,
Notary Public.

56 UNITED STATES OF AMERICA, ss:

To F. M. Currie, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States within 30 days from the date hereof pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Nebraska wherein Edward Jaster Sr., was plaintiff in error and you are defendant in error to show cause, if any there be, why the judgement rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Silas A. Holcomb chief justice of the supreme court of the State of Nebraska, this 10th day of February in the year of our Lord nineteen hundred and four.

SILAS A. HOLCOMB,
Chief Justice of the Supreme Court of the State of Nebraska.

[Endorsed:] 12840. In supreme court Neb. Edward Jaster Sr. *vs.* F. M. Currie Citation. Supreme court of Nebraska. Filed Feb. 10 1904 Lee Herdman clerk. Supreme court of Nebraska. Filed Feb. 23 1904 Lee Herdman O. A. Abbott att'y for pl'ff in error.

57 And on the same day, to wit, February 10th, A. D., 1904, there was filed in the office of the clerk of said supreme court a certain assignment of errors in the words and figures following, to-wit:

58 In the Supreme Court of the State of Nebraska.

EDWARD JASTER, SR., Plaintiff in Error,
vs.
F. M. CURRIE, Defendant in Error.
} Assignment of Error and Prayer for Reversal.

Comes now Edward Jaster, Sr., plaintiff in error in the above named court and assigns the following as manifest error upon the face of the record to be corrected in the Supreme Court of the United States to which this cause is to be removed on a writ of error duly allowed for that purpose, to wit:

First.

The court erred in failing and refusing to give full force and effect to the judgement of the court of common pleas of Trumbull county, State of Ohio and in not holding that such judgement was con-

clusive of the present controversy between the parties thereto and that it entitled plaintiff in error to a judgement as prayed in his original petition.

Second.

The court erred in holding that the judgement of the court of common pleas of Trumbull county, State of Ohio was open to attack in this State on the ground that service on the defendant in error in Trumbull county, Ohio was unlawfully or fraudulently procured.

Third.

The court erred in holding that the plea and answer of the defendant in error constituted a defense to plaintiff's action on said judgement.

Fourth.

The court erred in failing to reverse the judgement of the district court of Custer county, Nebraska, overruling the de-
59 murrer of plaintiff in error to the plea and answer of the defendant in error.

Wherefore, plaintiff in error prays that the judgement of the supreme court of Nebraska and the judgement of the district court of Custer county, Nebraska and each of them may be reversed and that he may be restored to all things lost thereby.

O. A. ABBOTT,
Attorney for Plaintiff in Error.

60 [Endorsed:] 12840 In supreme cour- Neb. Edward Jaster Sr. *vs.* F. M. Currie. Assignment of error Supreme court of Nebraska. Filed Feb. 10 1904 Lee Herdman clerk. O. A. Abbott att'y for pl'ff in error.

61 STATE OF NEBRASKA, *ss:*

I, Lee Herdman, clerk of the supreme court of the State of Nebraska, do hereby certify that the foregoing is a true and correct transcript of the record, proceedings, opinion of the court and final judgment in a cause in said court, wherein Edward Jaster, Sr., was plaintiff and F. M. Currie was defendant, as fully as the same is of record and on file in my office.

I further certify that the annexed petition for writ of error, writ of error, citation, and assignment of errors, are the originals which were lodged in my office, and the whole is now returned in obedience to said writ of error.

I further certify that I have duly retained in my office true and correct copies of said petition for a writ of error, writ of error, citation and assignment of errors, with the indorsements thereon.

In testimony whereof, I have hereunto set my hand and caused

to be affixed the seal of said court, at the city of Lincoln, this 25 day of February, A. D., 1904.

[Seal Supreme Court of Nebraska.]

LEE HERDMAN,
Clerk of the Supreme Court of Nebraska.

62 In the Supreme Court of the State of Nebraska.

EDWARD JASTER, SR., Plaintiff in Error,
vs.
F. M. CURRIE, Defendant in Error. } Bond for Costs.

Know all men*t* be these presents, that we, Edward Jaster, Sr., as principal, and —— ——, as surety, are held and firmly bound unto the above named F. M. Currie in the full and just sum of two hundred dollars ($200) to be paid to the said F. M. Currie, his certain attorneys, executors, administrators or assigns to which payment we bind ourselves, our heirs, executors, administrators and assigns jointly and severally by these presents.

Dated this 27th day of February, A. D. 1904.

Whereas, lately, in the above named court and in a suit depending therein between the above named Edward Jaster, Sr., as plaintiff in error and the said F. M. Currie, as defendant in error, judgment was rendered against the said Edward Jaster, Sr., for costs and affirmance of the judgment of the district court of Custer county, Nebraska, and Edward Jaster, Sr., having prayed and obtained a writ of error to the Supreme Court of the United States and filed a copy thereof in the office of the clerk of said court to reverse the judgment of the aforesaid suit and a citation directed to F. M. Currie, citing and admonishing him to be and appear before the Supreme Court of the United States at the term therefore to be next holden.

Now the condition of the above obligation is such that if the said Edward Jaster, Sr., shall prosecute his said writ to effect
63 and answer all costs if he fai*d* to make his plea good, then the above obligation to be *f*oid, else to be and remain in full force and effect.

EDWARD JASTER, SR.,
By O. A. ABBOTT, *Att'y.*
AMERICAN BONDING COMPANY
OF BALTIMORE,
[SEAL.] By R. R. HORTH, *Vice-Pres'd't.*

Attest: O. A. ABBOTT, JR., *Ass't Sec'y.*

Witnesses:

—— ——.

Approved by me,
SILAS A. HOLCOMB,
Chief Justice, Supreme Court of Nebraska.

Dated this 29th day of February, A. D. 1904.

Endorsed: 12840. Edward Jaster, Sr., *v.* F. M. Currie. Bond for costs. Supreme court of Nebraska. Filed Mar. 12, 1904. Lee Herdman, clerk.

I, Lee Herdman, clerk of the supreme court of the State of Nebraska do hereby certify that the above and foregoing is a true copy of bond for costs in the case of Edward Jaster, Sr., *vs.* F. M. Currie, now on file in my office, together with all endorsements appearing thereon.

[Seal Supreme Court of Nebraska.]

LEE HERDMAN,
Clerk Supreme Court.

Endorsed on cover: File No. 19,264. Nebraska supreme court. Term No. 613. Edward Jaster, Senior, plaintiff in error, *vs.* F. M. Currie. Filed March 9th, 1904. File No. 19,264.